

A busy year: overview of Competition Authority's 2017 activities

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Introduction

To date, 2017 has been a busy year for the Competition Authority. During the first half of the year, the Competition Authority made 36 dawn raids on companies operating in several economic sectors, including retail, river cruises, driving instruction, insurance and railway maintenance.

Further to these dawn raids, the Competition Authority issued a statement of objections to the Association of Driving Schools (APEC),⁽¹⁾ in which it claimed that APEC had fixed minimum prices for driving licences in 170 affiliated driving schools. The president of APEC was also accused of unlawful behaviour, as he had been aware of APEC's conduct and done nothing to prevent it. APEC and its president have had the opportunity to reply to the statement of objections and the Competition Authority is yet to publish a final decision.

Although no details of the dawn raids that the Competition Authority has conducted have been released, it has clarified that it gathered evidence on cartel activities and other practices concerning the offering of goods and services with a direct impact on the final consumer.

Dawn raids were carried out on a number of railway maintenance companies and the Competition Authority confirmed that the case was opened following a complaint (possibly filed by a public entity). In recent years, the authority has launched a campaign to fight collusion and bid rigging in public procurement, which has included an associated whistleblower mechanism that can be used by any public or private entity involved in such activities.

Online whistleblowing

The Competition Authority has also launched a new mechanism under which any person may anonymously report antitrust violations via an online portal.⁽²⁾ This online resource contains a list of several behaviours that the authority can and cannot investigate and contains a brief explanation in each case – if the authority is not empowered to follow up on a given complaint (eg, misleading advertising), it redirects the complaint to the website of the specific public entity responsible for that matter.

This new mechanism runs parallel with the leniency programme that allows businesses to report their own involvement in a cartel in exchange for full immunity or a reduction in the fines that would otherwise be imposed on them. Apart from the benefit of anonymity, it is unclear whether there are other protections available to whistleblowers, especially if the person who files the complaint is a legal representative or a company director. Nonetheless, the authority clearly suggests that in such a situation, the whistleblower should also consider applying for leniency.

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The introduction of this mechanism reinforces the importance for companies to establish comprehensive and effective compliance programmes in order to remedy and discuss potential anti-competitive conduct.

Antitrust fines

The Competition Authority fined several companies from the Sonae Investimentos Group and the EDP Group approximately €38.3 million, one of the highest fines that it has applied.

According to the Competition Authority, the companies entered into an agreement under which Sonae Investimentos Group and EDP agreed not to compete in the commercialisation of the electricity business in mainland Portugal for two years. The Sonae Investimentos Group is active in retail distribution markets (but it has never commercialised electricity) and the EDP Group has activities in the production, distribution and commercialisation of electricity.

This alleged (non-compete) agreement was entered into in the context of a broader agreement that regulated the conditions of a promotional campaign launched by EDP and Sonae Investimentos in 2012, according to which EDP clients received a 10% discount of their electricity bills which could afterwards be used in Sonae Investimentos Group (Continente Supermarkets) supermarkets.

EDP and Sonae Investimentos announced that they will appeal the decision. Therefore, the Competition Authority's decision is not final, as it will be reviewed by the Competition, Regulation and Supervision Court.

Merger review

In the field of merger review, the Competition Authority has assessed 39 mergers in 2017 so far (although some of them were notified towards the end of 2016). At present, the authority is examining seven merger cases, including Altice's acquisition of sole control over Media Capital. Media Capital owns and broadcasts the main Portuguese free-to-air television channel and manages a content production company, whereas Altice controls PT Portugal, the former incumbent telecoms operator in Portugal. The acquisition of Media Capital raises complex competition issues, as it would result in the creation of a fully vertically integrated company active in the telecoms and media sectors with significant market power – both upstream and downstream.

The Competition Authority cleared almost all of the 39 concentrations reviewed, except SIBS's acquisition of Unicre's merchant acquiring business, a company that manages Multibanco, a leading interbank network which runs the majority of automated teller machines in Portugal.

According to the Competition Authority, the acquisition could ultimately lead to a monopoly in the national market for payment systems and, consequently, cause serious harm to merchants and the final consumer. Unicre's acquiring business, Redunicre, is the largest card payment acquirer in Portugal. Its closest competitor, Netcaixa, is owned by Caixa Geral de Depósitos bank, Portugal's largest bank and SIBS shareholder.

SIBS submitted a set of remedies to address the risks of horizontal and vertical anti-competitive effects identified by the Competition Authority, but they were not considered sufficient or adequate and therefore the authority issued a draft decision blocking the acquisition.

Comment

The final outcome of some of the cases above may provide a blueprint for similar cases in future. The Competition Authority's decisions are an important barometer regarding the direction that competition policy may take in Portugal in the next few years.

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Endnotes

(1) According to public announcements, the statement of objections was sent to APEC on July 31 2017.

(2) The portal can be accessed [here](#).

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